

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

August 11, 2005

IN RE:

**JOINT PETITION OF TELCOVE, INC., LLC,
KMC TELECOM HOLDINGS, INC., KMC
TELECOM LLC, KMC TELECOM II LLC AND
KMC TELECOM III LLC FOR APPROVAL OF
A TRANSFER OF ASSETS AND CUSTOMER BASE**

**DOCKET NO.
05-00076**

ORDER APPROVING TRANSFER

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 13, 2005 for consideration of the *Joint Petition and Waiver Request* ("*Joint Petition*") filed by TelCove, Inc. ("TelCove"), TelCove Operations, Inc. ("TelCove Operations"), KMC Telecom Holdings, Inc. ("KMC Holdings"), KMC Telecom LLC ("KMC"), KMC Telecom II LLC ("KMC II") and KMC Telecom III LLC ("KMC III") (together with KMC and KMC II, the "KMC Operating Companies" and, together with TelCove and TelCove Operations, the "Petitioners") for TRA approval, pursuant to Tenn. Code Ann. § 65-4-112 (2004) and the rules of the TRA, of a transfer of certain assets, including certain customer accounts, from the KMC Operating Companies to TelCove and TelCove Operations.

The Joint Petition

TelCove Operations is a Delaware corporation and a subsidiary of TelCove. By an order dated June 29, 2004 in TRA Docket No. 00-00271, TelCove Operations received a

Certificate of Public Convenience and Necessity (“CCN”), authorizing it to provide local exchange telecommunications within the State of Tennessee.

KMC Holdings also is a Delaware corporation and the ultimate holding company parent of the KMC Operating Companies. KMC III received its CCN to provide interexchange service in Tennessee by an order dated September 16, 1999 in TRA Docket No. 99-00211.

On March 15, 2005, the Petitioners filed a *Joint Petition* seeking the TRA’s approval of a transfer of certain assets, including certain customer accounts, from the KMC Operating Companies to TelCove. Along with the *Joint Petition*, the Petitioners submitted a customer notification letter for Authority approval.

The proposed transaction will result in a transfer of a portion of the 5ESS switches and related assets and network operations of the KMC Operating Companies. When the transactions are complete, TelCove will assume KMC III’s telecommunications operations in Tennessee.

According to the *Joint Petition*, TelCove will be able to rely upon the expertise and experience of its existing management to continue the current operations of KMC III and provide the same services at the same rates, terms and conditions as are currently provided by KMC III to its customers.¹ Although the proposed transaction will be seamless to customers, the Petitioners intend to provide a customer notification letter that conforms to TRA Rule 1220-4-2.56(2)(d).

The *Joint Petition* states that the proposed transfer is part of the on-going efforts of KMC Holdings to focus its resources on providing traditional and IP wholesale telecommunications and enhanced services to carriers and large enterprises over a newly

¹ *Joint Petition and Waiver Request*, p 7 (March 15, 2005)

deployed softswitch and IP/MPLS network.² The Petitioners assert that the proposed transaction serves the public interest. The *Joint Petition* states that the assignment of KMC III's customer accounts will ensure that those customers continue to receive uninterrupted services.³ According to the Petitioners, the proposed transfer will not inconvenience, confuse or otherwise harm KMC III's customers.⁴ Finally, the *Joint Petition* states that the transaction is expected to enhance competition in the affected markets by introducing TelCove or expanding its presence as a viable competitor, while, at the same time, allowing KMC Holdings to continue the on-going restructuring of its operations.⁵

June 13, 2005 Authority Conference

The Parties submitted the *Joint Petition* pursuant to Tenn. Code Ann. § 65-4-112 (2004) and the rules of the TRA. Tenn. Code Ann. § 65-4-112(a) (2004) requires that public utilities obtain TRA approval before merging or consolidating property, rights or franchises with utilities of like character holding CCNs in the State of Tennessee. Tenn. Code Ann. § 65-4-112(a) (2004) provides:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Further, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be sent by the current provider of telecommunications service to its customers

² *Id* at 2

³ *Id* at 7.

⁴ *Id* at 8.

⁵ *Id*

describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter unless the customer selects another telecommunications service provider. The customer notification shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority may waive any requirement of 1220-4-2-.56(2)(d)(2) or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, among other things, evidence that the current provider is no longer providing service in Tennessee.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

At the regularly scheduled Authority Conference held on June 13, 2005, the panel voted unanimously to approve the *Joint Petition* and the customer notification letter pursuant to a finding of compliance with the requirements of Tenn. Code Ann. § 65-4-112 (2004) with the condition that the Petitioners modify the customer notification letter in accordance with TRA Rule 1220-4-2-.56(2)(d)(4) and submit the modified letter to the Authority's General Counsel, or his designee, for approval. Specifically, the Petitioners are to modify the letter so that it contains a provision informing the customers that the new provider will issue a 30-day notice of any rate increase occurring within 90 days following this transfer.

IT IS THEREFORE ORDERED THAT:

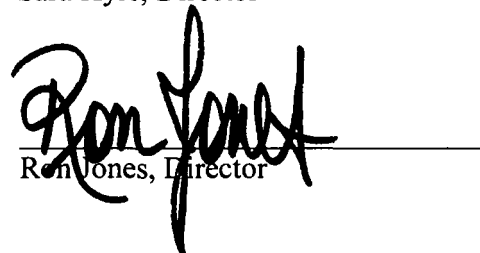
1. The transfer of assets as described in the *Joint Petition and Waiver Request* and discussed herein is approved with the condition that the Petitioners modify the customer

notification letter in accordance with TRA Rule 1220-4-2-.56(2)(d)(4) and submit the modified letter to Authority's General Counsel, or his designee, for approval

2. The customer notification letter is approved with the condition that the Petitioners modify the letter in accordance with TRA Rule 1220-4-2-.56(2)(d)(4) and submit the modified letter to the Authority's General Counsel, or his designee, for approval


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director